

**INDIVIDUAL PRACTICES IN CIVIL CASES**

**J. PAUL OETKEN**  
**UNITED STATES DISTRICT JUDGE**  
**SOUTHERN DISTRICT OF NEW YORK**

**Chambers**

Room 2101  
40 Foley Square  
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**Courtroom**

Courtroom 706  
40 Foley Square  
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These Individual Practices shall apply to all civil matters except for *pro se* cases. If a case has been referred to a magistrate judge for general pretrial purposes, the magistrate judge's practices will control with respect to all matters within the scope of the reference.

**1. Communications with Chambers**

- A. Letters and Letter Motions.** Except as otherwise provided below, all communications with Chambers shall be by *letter motion* (filed on ECF in accordance with the SDNY Local Rules and Electronic Case Filing Rules) or, if no relief is being sought by the Court, by *letter* (also filed on ECF). All requests for adjournments and extensions of time shall be filed by letter motion in accordance with paragraph 3(C) below. All requests for pre-motion conferences regarding discovery disputes shall be filed by letter motion in accordance with paragraph 4(B) below. Any response to a letter or letter motion shall be filed within three business days of the filing of the letter or letter motion.
- B. Letters Containing Confidential Information.** Any letter to be filed under seal or containing confidential or sensitive information may be e-mailed to the Court ([OetkenNYSDChambers@nysd.uscourts.gov](mailto:OetkenNYSDChambers@nysd.uscourts.gov)) as a .pdf attachment. Requests for redactions and filing under seal are governed by paragraph 2(E) below.
- C. Telephone Calls.** Communication with Chambers shall occur by letter motion or letter. Calls to Chambers are permitted only in *urgent* situations that require immediate attention.
- D. Faxes.** Faxes are not permitted except with prior approval of Chambers.

## 2. Rules for All Filings

- A. **Electronic Filings.** All electronic submissions should be in the form of text-searchable .pdf documents.
- B. **Courtesy Copies.** Paper submissions should not be bound by plastic or velo binding. Instead, paper submission may be stapled, held together with a binder clip, or three-hole punched and placed in binders. Courtesy copies may be submitted by regular mail or hand-delivery. Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Daniel Patrick Moynihan Courthouse at 500 Pearl Street and may not be brought directly to Chambers. Hand deliveries are periodically retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to chambers.

If hand-delivered material requires the Court's immediate attention, call Brandon Skolnik at (212) 805-4701 to coordinate delivery to Courtroom 706 at 40 Foley Square.

- C. **Memoranda of Law.** Memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents. Surreply memoranda will not be accepted. Motion papers shall be filed promptly after service. Movants must send the Court one courtesy copy of the motion, supporting memorandum, memorandum in opposition, and reply *at the time the reply is served*.
- D. **Unpublished Cases.** Westlaw citations should be provided, if available, to cases not available in an official reporter.
- E. **Redactions and Filing Under Seal.** Any party wishing to file any document under seal or in redacted form shall e-mail a letter request as a .pdf attachment to the Court's e-mail address (OetkenNYSDChambers@nysd.uscourts.gov), copying all counsel. The letter must explain the reasons for seeking to file the submission under seal and must address the standard set out in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). E-mails shall state in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the e-mail; such substantive content will be disregarded. If a request for redactions is based on another party's

designation of information as confidential, the parties shall confer and jointly submit the request for redactions.

One courtesy copy of all papers associated with any request for redactions shall also be mailed or hand-delivered to Chambers. The letter requesting redactions must include as attachments: (1) one full set of the relevant document(s) in highlighted form (*i.e.*, with the words, phrases, or paragraphs to be redacted highlighted); and (2) one partial, looseleaf set, consisting solely of those pages on which the party seeks to redact material. If the Court approves the proposed redactions, the Court will file the unredacted pages under seal and direct the filing party to submit the redacted version of the document(s) on ECF.

### 3. Rules for Specific Types of Filings

- A. **Complaints.** Plaintiffs shall ensure that a copy of the operative complaint is posted electronically to the docket on the ECF system by emailing the complaint to [caseopenings@nysd.uscourts.gov](mailto:caseopenings@nysd.uscourts.gov). There is no need to submit courtesy copies of pleadings, unless immediate relief is sought (*e.g.*, a TRO).
- B. **Bankruptcy Appeals.** Briefs in bankruptcy appeals shall be submitted in accordance with Fed. R. Bankr. P. 8009-10. Counsel may seek an extension of the default deadlines by filing a letter motion with all parties' consent no later than 48 hours before the brief is due.
- C. **Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions shall be made by letter motion, filed on ECF, and must state: (1) the original date and the new date requested; (2) the number of previous requests for adjournment or extension; (3) whether the previous requests were granted or denied; and (4) whether the adversary consents, and if not, the reasons given by the adversary for refusing to consent. All requests for adjournments and extensions of time shall be made at least *48 hours* before the scheduled deadline or appearance.
- D. **Motions for Default Judgment.** A party seeking a default judgment shall proceed in accordance with the procedure set forth in Attachment A.

**E. Motions to Dismiss.**

- i. Pre-motion letters and pre-motion conferences are not required for motions to dismiss.
- ii. If a motion to dismiss is filed, the plaintiff has the right to amend its pleading within 21 days pursuant to Fed. R. Civ. P. 15(a)(1)(B). If the plaintiff elects not to amend its pleading, no further opportunity to amend will ordinarily be granted and the motion to dismiss will proceed in the normal course. If the plaintiff elects to amend its pleading, the defendant shall, within 21 days of such amendment: (1) file an answer; (2) file a new motion to dismiss; or (3) submit a letter to the Court via ECF stating that it relies on the previously filed motion to dismiss. If the movant files an answer or a new motion, the Court will dismiss the original motion to dismiss as moot.

**F. Motions for Summary Judgment.**

- i. Pre-motion letters and pre-motion conferences are not required for motions for summary judgment.
- ii. In cases referred to a magistrate judge for general pretrial matters, motions for summary judgment are due within 30 days after the close of discovery, unless otherwise ordered.
- iii. Any party moving for summary judgment will provide all other parties with an electronic copy, in Microsoft Word format, of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1 Opposing parties must reproduce each entry in the moving party's Rule 56.1 Statement, and set out the opposing party's response directly beneath it. If the opposing party wishes to generate its own statements of material facts, it shall begin numbering each entry where the moving party left off.
- iv. Deposition transcripts should be text-searchable and include an index.
- v. Unless otherwise specified, Plaintiffs' exhibits shall be designated numerically and Defendants' exhibits shall be designated alphabetically.

- G. Filings Regarding Discovery Disputes.** Any filings regarding discovery disputes shall be made in accordance with paragraph 4(B) below.
- H. Proposed Orders and Stipulations.** Proposed orders to show cause, preliminary injunctions, and temporary restraining orders, as well as stipulations of dismissal, should be brought to the Orders Clerk (500 Pearl Street, Clerk's Office) and proposed judgments should be presented to the Judgments Clerk (500 Pearl Street, Clerk's Office). Counsel may also e-mail such materials to [judgments@nysd.uscourts.gov](mailto:judgments@nysd.uscourts.gov). Courtesy copies need not be sent to chambers.
- I. Settlement Agreements.** The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish the Court to retain jurisdiction to enforce a settlement agreement, the parties must place the terms of their settlement agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to endorse or include the terms of the settlement agreement in their stipulation of settlement and dismissal.
- Settling parties in cases brought under the Fair Labor Standards Act should also refer to *Cheeks v. Freeport Pancake House, Inc.*, 2015 WL 4664283 (2d Cir. Aug. 7, 2015), and *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332 (S.D.N.Y. 2012).
- J. Diversity Jurisdiction Cases.** In any action in which subject matter jurisdiction is founded on diversity of citizenship pursuant to 28 U.S.C. § 1332, the party asserting the existence of such jurisdiction shall, prior to the Initial Pretrial Conference, submit to the Court a letter no longer than two pages explaining the basis for that party's belief that diversity of citizenship exists. Where any party is a corporation, the letter shall state both the place of incorporation and the principal place of business. In cases where any party is a partnership, limited partnership, limited liability company, or trust, the letter shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees.

#### **4. Procedures for Conferences**

- A. Initial Case Management Conference.** The parties shall submit a proposed Civil Case Management Plan and Scheduling Order to the Court at least three business days before the initial case management conference.
- B. Discovery Disputes.** Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by

telephone, in an effort to resolve the dispute. If the meet-and-confer process does not resolve the dispute, the party may submit a letter motion to the Court, no longer than five pages in length, explaining the nature of the dispute and requesting an informal conference with the Court. Such letter motion must include a representation that the meet-and-confer process occurred and was unsuccessful. If the opposing party wishes to respond to the letter, it must do so within three business days. Pursuant to Local Rule 37.2, parties may not file a motion under Rules 26 through 37 of the Federal Rules of Civil Procedure unless they have requested an informal conference.

## **5. Procedures Immediately Preceding Trial**

**A. Joint Pretrial Order.** Within 30 days after the close of discovery, or, if a dispositive motion has been filed, within 30 days after a decision on such motion, the parties shall submit a proposed joint pretrial order. One set of courtesy copies of the joint pretrial order, and of all documents filed or served with the joint pretrial order, should be submitted to Chambers on the date of filing or service. The order shall include the following:

- i. The full caption of the action, as the parties wish it to appear on all trial documents.
- ii. The names, law firms, addresses, telephone numbers, and e-mail addresses of trial counsel.
- iii. A brief statement by the plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied upon and any relevant facts as to citizenship and amount in controversy.
- iv. A brief summary by each party of the claims and defenses that the party asserts remain to be tried, including citations to any statutes on which the party relies. Such summaries shall also identify all claims and defenses previously asserted which are not to be tried. The summaries should not cite any evidentiary matter.
- v. A statement as to the number of trial days needed and whether the case is to be tried with or without a jury.

- vi. A statement as to whether all parties have consented to trial by a Magistrate Judge, without identifying which parties do or do not consent.
- vii. Any stipulations or agreed statements of fact or law to which all parties consent.
- viii. A list of all trial witnesses, with an indication of whether each such witness will testify in person or by deposition, and a brief summary of the substance of each witness's testimony.
- ix. A designation by each party of deposition testimony to be offered in its case in chief and any counter-designations and objections by any other party.
- x. A list by each party of exhibits to be offered in its case in chief, with one asterisk indicating exhibits to which no party objects on grounds of authenticity, and two asterisks indicating exhibits to which no party objects on any ground.
- xi. A statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages.

**B. Motions in Limine**

- i. Any motions *in limine* shall be filed and served on or before the date on which the joint pretrial order is due.
- ii. Any brief in opposition to a motion *in limine* shall be filed and served within one week of service of such motion
- iii. Any opposition to a legal argument in a pretrial memorandum of law shall be filed and served within one week of service of such memorandum.

**C. Required Pretrial Filings.**

- i. **In jury cases**, the following shall be filed with the joint pretrial order:

- a. Proposed (i) voir dire questions to be asked of prospective jurors, (ii) requests to charge, and (iii) verdict forms. The parties must meet and confer in an effort to reach agreement with respect to these submissions. The parties shall make a joint submission with respect to those items that are agreed upon, and separate submissions with respect to those on which the parties cannot reach agreement.
- b. In cases in which a party believes it would be useful to the court, a pretrial memorandum of law addressing any issues of law that are expected to arise at or before trial.

**ii. In non-jury cases:**

- a. With the filing of the joint pretrial order, the parties shall file proposed findings of fact and conclusions of law. The proposed findings of fact should be detailed and should include citations to the proffered trial testimony and exhibits, as there may be no opportunity for post-trial submissions. The parties must meet and confer in an effort to reach agreement with respect to those findings and conclusions as to which there is no dispute; as to any agreed-upon findings and conclusions, the parties should make a joint submission.
- b. With the filing of the joint pretrial order, each party shall file a pretrial memorandum of law summarizing the applicable law and relevant facts, identifying the issues for trial, and addressing any evidentiary issues.
- c. With the filing of the joint pretrial order, each party shall submit to the Court and serve on opposing counsel (but shall not file on ECF): (i) deposition excerpts that will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition (including page citations to the deposition transcripts); and (ii) one set of documentary exhibits to be used at trial.

**D. Exhibits.** On the first day of trial, each party shall submit two copies of an updated exhibit list and all trial exhibits. The exhibits must be pre-marked and assembled sequentially in loose leaf binders or manila folders for ease of



reference. Unless otherwise ordered, the exhibits should be designated numerically for Plaintiffs and alphabetically for Defendants. If practicable, the parties shall submit a USB drive containing electronic, .pdf copies of all exhibits.

### **Attachment A: Default Judgment Procedure**

Any party wishing to obtain entry of a judgment by default must comply with Local Civil Rule 55.1 and 55.2 and shall proceed as follows:

1. File a Request to Enter Default and a supporting affidavit via ECF.
2. Fill out this form, <http://www.nysd.uscourts.gov/file/forms/clerks-certificate>, and email it to the Orders and Judgments Clerk at [judgments@nysd.uscourts.gov](mailto:judgments@nysd.uscourts.gov) or deliver it by hand to Room 200, at 500 Pearl Street. The form should be emailed in Word or Word Perfect format, not .pdf format. The form should not be filed via ECF.
3. After at least 30 days have passed following effective service of the summons and complaint (to allow for receipt of an appearance by mail), serve a copy of the Motion for Entry of a Default Judgment, together with a copy of the Clerk's certificate of default, on the defaulting defendant. These papers shall be accompanied by a Notice stating:

THE ATTACHED LEGAL PAPERS ARE BEING SERVED ON YOU BECAUSE YOU HAVE FAILED TO APPEAR IN A LAWSUIT BROUGHT AGAINST YOU. IF YOU DO NOT ENTER AN APPEARANCE IN THE LAWSUIT ON OR BEFORE **[INSERT A DATE NO EARLIER THAN 20 DAYS FROM THE DATE OF SERVICE OF THE NOTICE AND MOTION]**, THE COURT WILL ENTER A DEFAULT JUDGMENT AGAINST YOU. IF YOU ARE A CORPORATION, YOU CAN ONLY APPEAR THROUGH AN ATTORNEY. IF YOU ARE AN INDIVIDUAL, YOU MAY APPEAR BY AN ATTORNEY OR APPEAR YOURSELF PRO SE. IN EITHER EVENT, YOU MUST TAKE SOME ACTION OR A JUDGMENT WILL BE ENTERED AGAINST YOU. ENTRY OF A JUDGMENT MAY RESULT IN A LEVY AGAINST YOUR PROPERTY.

4. File the following documents via ECF:
  - a. The Motion for Entry of a Default Judgment
  - b. A proposed form of default judgment
  - c. An affidavit setting forth:
    - i. A description of the nature of the claim;
    - ii. The basis for subject matter jurisdiction; and
    - iii. The basis for personal jurisdiction over the defendant;
  - d. The Clerk's certificate of default;

- e. A copy of the claim to which no response has been made; and
  - f. Proof of service on the defaulting defendant of the Motion, the Clerk's certificate of default, and the Notice.
5. If the plaintiff seeks an award of damages in the motion for default judgment, the plaintiff should also file:
- a. A request for an amount equal to or less than the principal amount demanded in the Complaint;
  - b. Definitive information and documentation such that the amount provided for in the proposed judgment can be calculated (or, if this requirement cannot be satisfied, a default judgment may be granted as to liability, with damages to be determined by an inquest);
  - c. An affidavit representing that no part of the judgment sought has been paid, other than as indicated in the motion;
  - d. A request for interest on the principal amount not to exceed 9%, if interest is sought; and
  - e. The calculations made in arriving at the proposed judgment amount.